IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3586/2006

DR. JAI MUNI GANDHI
Vs.
ADDITIONAL DISTRICT JUDGE (FAST TRACK) NO.4,
JAIPUR CITY, JAIPUR & ORS.

Date: 16.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. J.P. Gargey for the petitioner.
Mr. G.P. Sharma for respondent Nos. 2 and 3.
Mr. K.J. Mehta for respondent No.4.

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This writ petition is directed against the order dated 23.02.2006 passed by the Additional District & Sessions Judge (Fast Track) No.4, Jaipur City, Jaipur, whereby the application filed by the petitioner under Order 9 Rule 7 CPC has been rejected on the ground that service through registered post was made effective upon the defendant-petitioner, therefore, ex parte proceedings have been taken against the petitioner on 05.07.97.

The plea taken by the petitioner in the application under Order 9 Rule 7 CPC is that he came to know about the notice only on 15.11.2005 and after

having knowledge this application has been moved on 26.11.2005.

Per contra, learned counsel appearing for the respondent No.4 has strongly objected and submits that the petitioner was well aware of pendency of the suit and the service was made effective through registered post on the petitioner. It is also stated that as per the averments made in para No. 10 of the legal notice sent by the petitioner through his counsel, it clearly indicates that the petitioner was well aware of pendency of the suit.

It is further submitted that earlier a writ petition was also filed by the respondent No.4 in which notices were issued and the same were served in the year 2004. Therefore, it also reveals that the petitioner may have knowledge of pendency of the suit and thus, the trial Court has committed no wrong while rejecting the application of the petitioner filed under Order 9 Rule 7 CPC.

Learned counsel appearing for the respondent Nos. 2 and 3 has no objection if the application of the petitioner moved under Order 9 Rule 7 CPC is allowed.

I have heard rival submissions of the respective parties and have also carefully gone through the order impugned dated 23.02.2006 passed by the trial Court.

It is not disputed that the notices were sent through registered post and alleged to be served upon the petitioner, but the petitioner challenged that the signature on the registered AD is not of the petitioner and as averred by the petitioner that conclusion drawn by the trial Court is on conjectures and surmises and the petitioner only came to know through telephonic conversation with plaintiff No.1 on 15.11.2005 and the trial Court has held that this is not possible and appears to be not correct.

Be that as it may, while exercising extraordinary powers vested under Article 226 of the Constitution of India, I do not want to enter into such disputed questions of facts, but in the interest of justice, I deem it proper to allow the application of the petitioner moved under Order 9 Rule 7 CPC subject to payment of Rs. 5,000/- as cost and direct the trial Court to hear the matter on merits.

In view of the observations made herein above, the writ petition stands allowed. The interim

order dated 04.05.2006 granted by this Court is herewith rejected.

In the light of the aforesaid observations, the application under Article 226(3) of the Constitution of India also stands rejected.

(K.S. RATHORE),J.

/KKC/